CF/05 3

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

**WRIT PETITION NO. 3256 of 2005**

**PETITIONER/ DEFENDANT NO.1** : Hari Sinha, S/o Lal Ji Sinha, Aged about 55 years, Present Address Aghoreshwar Abilash Service Station (Petrol and Diesel Pump), Gamhariya, Jashpurnagar (Chhattisgarh).

P.R. No. 2968/05 Presented by Sameer Behar dated 30/6/05

Versus

**RESPONDENT/ PLAINTIFF**

1. Vishwanath Sharma, S/o Jamuna Prasad Sharma, Aged about 77 years, Mantri Shri Sarveshwari Samuh Avam Baba Bhagwan Ram Awadut Trust Kust Seva Ashram, Varanasi (Uttar Pradesh),
Branch Gamhariya, Jashpur (Chhattisgarh).
Permanent R/o Darogapara, Raigarh (Chhattisgarh).

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**RESPONDENT/ DEFENDANT NO.2**

2. Union of India,
Through Secretary, Ministry of Petroleum, Shastri Bhawan, New Delhi – 1.

**RESPONDENT/ DEFENDANT NO.3**

3. Managing Director/
Senior Divisional Manager,
Bharat Petroleum Corporation Limited (BPCL) Kanoriya House, Palm Road, Nagpur – 400 001 (Mahrashtra).

**RESPONDENT/ DEFENDANT NO.4**

4. State of Chhattisgarh,
Through : Collector, Raigarh (Chhattisgarh).

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**WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA**

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** .....W.P.NO.3256..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | **22-8-2005**<br>Shri V. R. Tiwari, counsel for the petitioner.<br>Shri Parag Kotecha, Panel Lawyer for the State.<br>By the instant petition, the petitioner has questioned the legality, propriety and correctness of the order dated 5-5-2005 passed by the First Civil Judge, Class 1, Jashpur, in civil suit No.5-A/97 whereby the application filed by the petitioner to decide issue Nos.5, 7 and 8 as preliminary issue has been rejected on the ground that these questions are mixed questions of fact and law and without recording evidence the same cannot be decided as preliminary issue.<br>I have gone through the plaint, issues and the order passed by the trial Court in which the trial Court has recorded that all the 3 questions are mixed questions of fact and law and finding can be recorded only after recording evidence of the parties. It is also not possible that these 3 questions are decided after recording evidence first and remaining should be decided thereafter.<br>In view of the above, I do not find any substance in this petition, the same is liable to be dismissed and it is accordingly dismissed.<br>Consequently, M.(W.)P. No.2780/2005 and I.A. No.6290/2005 also stand disposed of.<br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | |
| Barve | | |

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